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April 2, 2007

VIA ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: RM-11358: Petitions for Rulemaking and Clarification Regarding
the Commission's Rules Applicable to Incumbent LEC Retirement
of Copper Loops and Copper Subloops

Dear Ms. Dortch:

XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc., through counsel, hereby submit their reply comments for filing with the Commission in the above-referenced proceeding. Please feel free to contact the undersigned counsel, at (202) 342-8625, if you have any questions or require further information.

Respectfully submitted,



Brett Heather Freedson

*Counsel to XO Communications, LLC,
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**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of the)	
)	
Petition of XO Communications, LLC,)	
Covad Communications Group, Inc., NuVox)	
Communications and Eschelon Telecom, Inc.)	RM-11358 (consolidated)
for a Rulemaking to Amend Certain Part 51)	
Rules Applicable to Incumbent LEC)	
Retirement of Copper Loops and Copper)	
Subloops)	
)	
In the Matter of Policies and Rules)	
Governing Retirement of Copper Loops by)	
Incumbent Local Exchange Carriers)	

**REPLY COMMENTS OF XO COMMUNICATIONS, LLC,
COVAD COMMUNICATIONS GROUP, INC.,
NUVOX COMMUNICATIONS, AND ESCHELON TELECOM, INC.**

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April 2, 2007

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**REPLY COMMENTS OF XO COMMUNICATIONS, LLC,
COVAD COMMUNICATIONS GROUP, INC.,
NUVOX COMMUNICATIONS, AND ESCHELON TELECOM, INC.**

XO Communications, LLC, Covad Communications Group, Inc., NuVox Communications and Eschelon Telecom, Inc. ("Petitioners"), through counsel and pursuant to the Public Notice of the Federal Communications Commission ("Commission" or "FCC") in the above-captioned proceeding,¹ submit these reply comments in support of their Petition for a Rulemaking to Amend Certain Part 51 Rules Applicable to Incumbent LEC Retirement of Copper Loops and Copper Subloops ("Petition"), and the related Petition for Rulemaking and Clarification in the Matter of Policies and Rules Governing Retirement of Copper Loops and Copper Subloops. For the reasons set forth herein, Petitioners respectfully request that the Commission expeditiously grant the relief sought in the Petition, as further clarified herein,

¹ *Petitions for Rulemaking to and Clarification Regarding the Commission's Rules Applicable to Copper Loops and Copper Subloops*, RM-11358, Public Notice, DA 07-209 (rel. Jan 30, 2007).

applicable to retirement of copper loops, copper feeder and copper subloops by the incumbent local exchange carriers (“LECs”).

I. INTRODUCTION AND SUMMARY

The opening round of comments demonstrates support from competitive carriers, a state commission, and interested observers who emphasize the value of the rate payer financed legacy copper loop plant both in terms of its real-time ability to deliver broadband on a wide-scale basis and its unique line-powered capability that enables copper loop plant to function when power failures take down fiber and other transmission infrastructure. This copper loop plant represents the most ubiquitous broadband infrastructure in place today. It is capable of delivering more broadband more quickly to more people. These commenters recognize that the Commission’s current network change notification process must be modified so that copper loop retirements are weighed against the public interest in fostering ubiquitous broadband availability, competition among wireline broadband service providers, and line-powered redundancy in case of a public safety or homeland security crisis.

Verizon, AT&T and Qwest (collectively, the “Bells” or “Bell Companies”), their industry association, and Corning, the nation’s largest producer of optical fiber, filed in opposition to the Petitions. These entities urge the Commission to ignore the issues raised in the Petition. They argue that nothing has changed to warrant any modification to the Commission’s rules. But this argument ignores or downplays the fact that competitive LECs and their equipment suppliers have answered the Commission’s challenge to innovate and now can deliver video and more bandwidth over copper than was thought possible at the time the Commission issued its revised network change notification rules. Corning and Verizon also argue that fiber is “better” than copper. Fiber is different than copper. Whether it is “better” depends on

perspective and circumstances. Even if fiber is categorically “better”, then surely incumbent LECs will continue to thrive and will not be harmed by allowing competitors, consumers and businesses to decide whether copper is “better” for them.

The Bells and Corning uniformly rely on the premise that the Commission’s broadband policies are working and should not be disturbed. They do not explain why eliminating copper loop plant is a necessary component of that policy. It isn’t. They do not explain why the removal of such loop plant is not anticompetitive. It is. They do not explain why Americans should be forced to trade line-powered copper reliability and redundancy for a service that is only as good as the battery a consumer must figure out where to buy and remember when to replace. They shouldn’t. Instead, the Bells offer only tepid assurance that they actually have not engaged in widespread retirements of copper loop plant to date. If this is so, then surely copper loop retirement is not a critical component of the broadband strategy the Bells assert has been successful.

Notably, these assertions that retirements of copper facilities are not common practice among the incumbent LECs do not appear to encompass the retirement of copper feeder plant which is accelerating at a disturbing pace. The unnecessary retirement of copper feeder plant is as harmful to competitors, consumers, and businesses as the retirement of any other copper loop plant. The ability of competitors to provide broadband over copper depends squarely on the preservation of access to “home-run” copper loops. Once copper feeder is retired, the entire loop facility is for practical purposes rendered unavailable for broadband over copper technologies. Because unnecessary copper feeder retirements have the same effect on a competitor’s ability to deploy and provide broadband – and result in the same public interest

harms – as the unnecessary retirements of other copper loop facilities, the rule modifications proposed must extend to copper feeder retirements.

The Bells also argue that subjecting them to the proposed public interest process will unfairly result in their having to maintain “dual networks.” This argument is based on the fiction that there actually are two independent networks – one copper and one fiber. Not so. In reality, there is one integrated network comprised of both fiber and copper. It has been this way for years and it will continue to be this way for decades to come. Even the most aggressive of the planned Bell fiber deployments passes only a fraction of that incumbent LEC’s customers. And even the rosier of predictions suggests that the “take” rate for such deployments will capture only a fraction of that fraction of customers. The remainder will be served over copper. Moreover, current Commission rules do not require maintenance of unused copper plant that has been overbuilt with Fiber-to-the-Home (“FTTH”) / Fiber-to-the-Curb (“FTTC”) loop plant. Instead, the maintenance obligation arises only when an unbundling request and associated revenues are received. Bell arguments that Total Element Long Run Incremental Cost (“TELRIC”) rates are not compensatory are no more persuasive today than they were when the United States Supreme Court rejected them years ago.

The Bells also argue about Commission precedent and its impact on this proceeding. These arguments fail because they depend on Bell misstatements about Commission precedent rather than actual Commission precedent. For example, Verizon argues that the Petitions seek to “re-ignite the UNE wars” by requesting unbundling that is not presently required.² But this is not the case. The Commission has found that competitive LECs are impaired without unbundled access to copper loops. Verizon also asserts that unbundling of

² Comments of Verizon on Copper Retirement Petitions, RM-11358, at 2 (filed Mar. 1, 2007) (“Verizon Comments”).

copper loops is for the provision of narrowband services only. This, however, is a fiction with no basis in Commission rules or precedent.

This proceeding is not about fiber or “new” wires; it is about copper or “old” wires. More precisely, it is about preventing the wasting of this valuable legacy copper loop plant. These “old” copper wires are a national asset that have had and continue to have an essential role in building businesses, improving living standards, and ensuring continuity and contact in case of a public safety and homeland security crisis. The Commission already has determined that competitive LECs are impaired without unbundled access to them and Petitioners do not seek to disturb that ruling here. Instead, Petitioners merely seek for the Commission to establish a process to permit careful consideration of public interest concerns related to copper loop retirement. Such a process will enhance the Commission’s ability to achieve the important policy goals it has identified with respect to broadband availability, broadband competition, and public safety, and it will allow the market to decide among competing technologies, services, speeds, media and carriers.

For all of the reasons set forth in the Petition and in these reply comments, Commission should expeditiously grant the relief sought in the Petition and not allow any further wasting of copper on its watch.³

³ The Commission recently concluded that “[r]ules governing the circumstances under which a carrier may retire copper loops are more appropriately addressed in the context of a rulemaking proceeding.” *AT&T Inc. and BellSouth Corp. Application for Transfer of Control*, WC Docket No. 06-74, Memorandum Opinion and Order, FCC 06-189, ¶ 196 (rel. Mar. 26, 2007).

II. **THE VALUE OF COPPER: UBIQUITY AND TECHNOLOGY MAKE COPPER LOOPS KEY TO THE REALIZATION OF THE COMMISSION'S PUBLIC POLICY GOALS**

The Bells uniformly oppose the Petition on the ground that nothing has changed to justify the proposed modifications to the copper loop retirement rules.⁴ But as the Petitions themselves and the comments demonstrate, plenty has changed. Technology has changed and continues to evolve. Today's technologies deliver 40 Megabit per second ("Mbps") and high definition video and television over copper.⁵ And soon, 100 Mbps will be attainable.⁶ Competitive LEC broadband product offerings have capitalized on these technological developments and their broadband product offerings continue to evolve based on the remarkable – and by no means exhausted – elasticity of the legacy copper infrastructure. The times also have changed. Ubiquitous broadband access and service continuity/redundancy are more important today than ever before.

What has not changed is the relative ubiquity of the nation's legacy copper loop plant. This plant is a national asset constructed largely under the protection of government sanctioned monopoly. The public has paid for it and compensated the incumbent LECs fully for the capital used to build it. Thus, it makes perfect sense for the Commission to modify its copper loop retirement rules to ensure that this plant continues to be used to serve the public interest for the remainder of its useful life.

The Petition merely seeks adoption of a process to ensure that the public interest is considered carefully when incumbent LECs seek to retire this valuable bottleneck copper loop

⁴ Opposition of AT&T, RM-11358, at 11, 12-13 (filed Mar. 1, 2007) ("AT&T Comments"); Opposition of Qwest Corporation, RM-11358, at 2 (filed Mar. 1, 2007) ("Qwest Comments"); Verizon Comments at 13; Comments of the United States Telecom Association, RM-11358, at 12-13 (filed Mar 1, 2007) ("USTA Comments").

⁵ Comments of Allan Isfan, RM-11358, at 10 (filed Mar 1, 2007) ("Isfan Comments").

⁶ *Id.*

plant. Contrary to the assertions of some commenters,⁷ the process proposed is not a uniform ban on copper loop retirement. Instead, it is a process that recognizes that the public interest must be considered. Despite the Commission's *Triennial Review Order* prediction, the Commission's modified network change notification rules and severely limited objection process have not proven to provide "adequate safeguards."⁸

A. Technology Has Changed and Competitive LECs Have Responded to the Commission's Challenge to Make the Most of their Access to the "Old Wires"

In the *Triennial Review Order*, the Commission challenged competitive LECs to find innovative new ways to compete using unbundled copper loop plant in a converging, bundled service communications world. Specifically, the Commission said that "with the knowledge that incumbent LEC next-generation networks will not be available on an unbundled basis, **competitive LECs will need to continue to seek innovative network access options to serve end users and to fully compete against incumbent LECs.**"⁹ The Commission specifically called for infrastructure investments in **equipment** (in addition to transmission facilities). The Commission reasoned:

With existing copper loops, all investment in advanced telecommunications capability is necessarily limited to the equipment, not the transmission facility. Therefore, **our obligation to encourage infrastructure investment tied to legacy loops is more squarely driven by facilitating competition and promoting innovation.** Because the incumbent LEC has

⁷ AT&T Comments at 8, 13-14; Verizon Comments at 13; USTA Comments at 12-13.

⁸ See *In the matter of Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, ¶ 281 (rel. Aug. 21, 2003) ("*TRO*" or "*Triennial Review Order*").

⁹ *Id.* ¶ 272 (emphasis added).

already made the most significant infrastructure investment, *i.e.*, deployed the loop to the customer's premises, we seek, through our unbundling rules, to encourage both intramodal and intermodal carriers (in addition to incumbent LECs) to enter the broadband mass market and make infrastructure investments in equipment. In addition, **we seek to promote the deployment of equipment that can unleash the full potential of the embedded copper loop plant** so that consumers can experience enhanced broadband capabilities before the mass deployment of fiber loops.¹⁰

Competitive LECs and equipment manufacturers responded boldly to this challenge. As demonstrated in the Petition, competitive LECs, including XO and NuVox, have invested heavily in Ethernet over copper technology and equipment. For example, XO now offers to customers up to 10 Mbps of bandwidth using standards-based Ethernet protocol.¹¹ Higher speed offerings are planned. Covad, one of the original broadband over copper companies, has responded with significant investments in advanced digital subscriber line ("DSL") technology and equipment such as ADSL2+. In December 2006, Covad completed the build-out of the nation's largest ADSL2+ network, which is capable of providing high-speed data and next-generation voice services to over 14 million homes and businesses in 12 major markets. In these markets, Covad is capable of providing customers broadband connections with data speeds of up to 25 Mbps.¹² Cavalier has invested in equipment that makes it possible to deliver high definition television and video over copper. Using the latest ADSL2+ technology, Cavalier can simultaneously deliver multiple channels of digital video, broadband DSL, and traditional phone service over existing phone lines. The Cavalier service platform utilizes point-to-point

¹⁰ *Id.* ¶ 244 (emphasis added).

¹¹ Carol Wilson, *XO Extends Ethernet Reach with Hatteras*, Telephony Online (Mar. 20, 2006), available at http://telephonyonline.com/broadband/news/XO_Hatteras_Ethernet_032006/.

¹² *Covad Completes Build-Out of Nation's Largest Next-Generation Telecommunications Network Ahead of Schedule* (Dec. 27, 2006), available at http://covad.com/companyinfo/pressroom/pr_2006/12_27_06.pdf.

switched video technology that results in a simpler and more reliable network than the multicast broadband used in a traditional cable system.¹³

One commenter in particular correctly recognized the “power of copper.” In his comments, Allan Isfan of Isfan Solutions discussed the growing numbers of advanced technologies that deliver high-bandwidth offerings over copper facilities, which now are essential to serve the explosive demand for broadband and Internet access. For example, upgraded ADSL2+ and Very High Speed DSL (“VDSL”) technologies currently deliver transmission speeds up to 100 Mbps,¹⁴ thereby enabling delivery of Internet Protocol Television (“IPTV”) services to primarily residential consumers.¹⁵ For business customers requiring “symmetric” services, Ethernet over copper technologies currently deliver transmission speeds of up to 40 Mbps, with greater reliability, and fewer service delays than its predecessors.¹⁶

Moreover, Mr. Isfan, an expert in copper loop technology, notes that the “power of copper” is not limited to its ability to provide ultra-high bandwidth transmission. As Mr. Isfan explains, “copper has long been used to power devices at the other end of the line to ensure ultra reliable service.”¹⁷ In addition to ensuring dial-tone during power outages, line-powering over copper can also be used to power more energy-intensive equipment such as Digital Subscriber Line Access Multiplexers and business access devices, thereby helping to ensure continuity of operations for businesses during power failures.¹⁸

¹³ *Cavalier Broadband TV Case Study*, available at <http://www.zhone.com/solutions/docs/zti-cs-cavalier.pdf>.

¹⁴ For copper loops greater than 1000 feet in length, these technologies deliver up to 50 Mbps of bandwidth, per pair.

¹⁵ Isfan Comments at 9.

¹⁶ *Id.* at 10.

¹⁷ *Id.* at 11.

¹⁸ *Id.*

Mr. Isfan is not alone in recognizing the promise and power of copper. A search of the Internet reveals scores of articles highlighting its capabilities, numerous equipment manufacturers touting their innovations and carriers publicizing their latest offerings. For example, Telekenex, a business-grade IP service provider, has rolled out Ethernet over copper to provide affordable last mile solutions including hosted voice over Internet protocol and Internet service.¹⁹ Allied Telecom Group and Expedient Communications have both also recently begun offering higher speed service to customers currently served by copper wires.²⁰ Equipment manufacturers also have been busy. For example, Hatteras and Actelis demonstrated Ethernet over copper products at the GlobalComm trade show in June 2006.²¹ These devices demonstrated that carriers can deliver Ethernet over copper at speeds ranging from between 2 to more than 50 Mbps.²² Hatteras has available at its website (hatterasnetworks.com) several white papers and primers touting its “Metro Ethernet Copper Access” equipment solutions.

The Bells’ response to this substantial evidence demonstrating the power of copper to deliver not only broadband, but also very high speed broadband, and to do so on line-powered metallic loops is to argue that fiber is better and more reliable.²³ The comparison offered is narrow and thinly supported. However, even if fiber has greater potential for higher bandwidth services, the fact of the matter is that the power of copper to deliver advanced

¹⁹ *Telekenex, Products + Services*, <http://www.telekenex.com/products-services.asp.html>.

²⁰ *Allied to Expand Service Offerings and Deliver Business-Class Ethernet Services to Customers Throughout the Washington DC Metro Area*, BUSINESS WIRE (Jun 22, 2004), available at <http://www.internetadsales.com/modules/news/article.php?storyid=1731>; see http://www.hatterasnetworks.com/public_docs/customer_success/Expedient_CaseStudy_28Sep2005.pdf.

²¹ William Jackson, *Ethernet-over-copper for all*, GOVERNMENT COMPUTER NEWS, (Jun. 5, 2006) available at http://www.gcn.com/online/vol1_no1/40949-1.html.

²² *Id.*

²³ USTA Comments at 17-18; Verizon Comments at 14-15; see also Comments of Corning, Inc., RM-11358, at 6 (filed Mar. 1, 2007) (“Corning Comments”).

broadband services is ready real-time. Legacy copper does not have to be deployed. These broadband transmission facilities are already in place. Moreover, they are in place with more ubiquity than any other broadband medium.²⁴ Plus, the Bells' fiber comparison suggests a choice that is a false one. Consumers, businesses, and government entities should be permitted the chance to choose among competing broadband services and media. The Commission need not and ought not make the choice for them²⁵ by allowing the Bells to eliminate wireline competition through the precipitous retirement of copper loop plant.²⁶

The Bells' arguments that fiber is more reliable than copper are also thinly supported.²⁷ However, even if fiber loop plant has fewer points of failure by design and is newer than copper, the fact of the matter is that only copper, by virtue of its metallic nature, can carry

²⁴ Isfan Comments at 4, n.4 (stating that, as of 2002, 75% of the loops were home-run copper from the central office to the customer premise).

²⁵ The Commission long has recognized that advanced telecommunications, including broadband services, must be regulated in a manner that is technology-neutral. With regard to Section 251(c)(3) of the 1996 Act, the Commission found "no evidence that Congress intended to eliminate the Commission's authority to require access to network elements used to provide advanced services -- a result which is at odds with the technology neutral goals of the Act and with Congress' aim to encourage competition in all telecommunications markets." *Deployment of Wireline Services Offering Advanced Telecommunications Technology*, Order on Remand, FCC 99-413, 15 FCC Rcd 385, ¶ 12 (rel. Dec. 23, 1999). Moreover, the Commission expressly embraced that its broadband policies, under Section 706 of the 1996 Act, must be technology-neutral. *In the Matter of Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 99-5, 14 FCC Rcd 2398, ¶ 74, n. 179 (rel. Feb. 2, 1999).

²⁶ These are the same Bell Companies that delayed rolling out DSL for more than a decade so as not to cannibalize their more profitable ISDN services until a competitive LEC's (Covad's) DSL offering forced them to do it. The Bells are focused on their bottom lines and on retaining the enormous market share that they enjoy. Such companies should not be given carte blanche to eliminate broadband options competitors and consumers have in their footprints today and can have in the near future by "retiring" copper loop plant. It is easy to see that the public interest in having competitive alternatives is not served in this manner.

²⁷ Verizon Comments at 14-15; USTA Comments at 17-18; *see also* Corning Comments at 9.

its own power source.²⁸ Verizon's response seems to be that, at least for this purpose, it has one network with fiber lashed to copper – or at least being carried over the same poles or through the same conduit.²⁹ Sure enough, there is one network – not only here, where it suits the Bells to say so, but in reality. But within that network, there are metallic copper loop facilities that are capable of carrying central office-supplied back-up power to end users and fiber facilities that cannot. For example, Verizon's FiOS customers must rely on a short-lived battery that is not always “on.”³⁰ Those customers must know where to get a replacement, when to replace, and how to replace the battery. And they must remember to keep checking. Some consumers might simply prefer to know that their service will be “on” without checking. Some businesses likely would prefer to have both copper and fiber connectivity, as two chances for connectivity over very different transmission media are better than one.³¹

B. Times Have Changed: Continuity of Operations and Network Redundancy Are More Important than Ever

Contrary to the Bells' assertions that nothing has changed to warrant modification of the Commission's copper retirement rules,³² the times certainly continue to change. Hurricane Katrina and other storms from the record-setting 2005 hurricane season demonstrated the continuing need for resilient, reliable, and redundant communications in the face of threats to

²⁸ Isfan Comments at 11; Comments of Daniel J. Udovic, RM-11358, at 1-2 (filed Feb. 28, 2007) (“Udovic Comments”).

²⁹ Verizon Comments at 24; AT&T Comments at 14.

³⁰ See Petition at n. 5; see also <http://www22.verizon.com/Content/ConsumerFiOS/>.

³¹ For example, enterprise level customers like ScanSource, Inc. rely on redundant facilities to maximize network “up-time,” in the event that certain equipment serving it business fails. *Application, Pursuant to Section 214 of the Communications Act of 1934 and Section 63.04 of the Commission's Rules for Consent to the Transfer of Control of BellSouth Corporation to AT&T, Inc.*, WC Docket No. 06-74, Reply Comments of ScanSource, Inc., at 4 (filed June 20, 2006).

³² AT&T Comments at 11, 12-13; Verizon Comments at 13; USTA Comments at 12-13; Qwest Comments at 2.

public safety and homeland security. Accordingly, “continuity of operations” and network redundancy are not simply government mandates, but increasingly a business necessity. The Federal government sought to address this concern in June 2005, when President George W. Bush required each agency to initiate a review of its telecommunications capabilities in the context of planning for contingencies and continuity of operations.³³ The Presidential Memorandum instructed agencies to consider the use of “redundant and physically separate telecommunications service entry points” and “the use of physically diverse local network facilities” in order to ensure continuity of operations in an emergency.³⁴ In making these considerations, agencies would be remiss if they failed to consider the line-powered advantage of copper loop plant.

Indeed, in its report to the Commission, the Independent Panel charged with reviewing the impact of Hurricane Katrina on communications networks specifically cited a lack of redundant network facilities as a reason for the communications failures.³⁵ Congress also continues to actively explore these issues.³⁶

The private sector is also recognizing the need for redundancy among telecommunications providers. In the enterprise market, many companies, particularly those that were affected by Hurricane Katrina or other disasters, are moving to multiple service providers.³⁷

³³ Joshua B. Bolten, *Regulation on Maintaining Telecommunication Services During a Crisis or Emergency in Federally-owned Buildings*, MEMORANDUM FOR THE HEAD OF DEPARTMENTS AND AGENCIES (Jun. 30, 2005).

³⁴ *Id.*

³⁵ Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission*, at i (June 12, 2006).

³⁶ See <http://www.senate.gov/~govt-aff/>.

³⁷ Mary Shacklett, *More Businesses Make the Move to Multiple ISPs*, ENTERPRISE NETWORKS & SERVERS, (Jun. 2006) available at <http://www.enterprisenetworksandservers.com/monthly/art.php?2341>; see also Drew

The financial services sector, in the wake of the September 11, 2001 terrorist attacks, has placed a strong emphasis on redundancy.³⁸

For many consumers, uninterrupted telecommunications service is also a necessity. And for many, the most reliable connection is a wireline connection. Generally, wireless substitution has occurred at slower rates among consumers with young children and the elderly. Families with young children are often reluctant to substitute wireless service for wireline service out of a desire to have a “back-up” or additional “security” in case there is an emergency.³⁹ With respect to the elderly, they may not want the features found on many of today’s cell phones or may not be able to see screens or easily use small keys on them, and they often end up rejecting them entirely.⁴⁰

As demonstrated in the Petition and in various comments filed in support of the Petition,⁴¹ the line-powered nature of copper enables it to work when services provided over non-metallic media do not. The Bells routinely market the benefits of their nearly ubiquitous line-powered copper loop products to consumers. Verizon’s current “It’s On” advertising

Robb, *Lessons in Business Continuity and Disaster Recovery*, BUSINESS COMMUNICATIONS REVIEW (Nov. 1, 2006).

³⁸ See, e.g., Roger W. Ferguson, Jr., Vice Chairman, Bd. of Governors of Fed. Reserve Bank, Remarks at the Conference on Bank Structure and Competition (May 9, 2002), <http://www.federalreserve.gov/boarddocs/speeches/2002/20020509/default.htm> (noting that “financial institutions should seek greater redundancy of telecommunications services through alternative technologies” and “eliminate potential single points of failure.”).

³⁹ Executive Summary, *Wireline/Wireless Substitution Study* (Nov. 2003) available at http://www.telegeography.com/products/wireline_wireless/exec_sum.php.

⁴⁰ Stephen Wildstrom, *Kindler, Gentler Cell Phones*, BUSINESS WEEK ONLINE (Sep. 19, 2005) available at http://www.businessweek.com/magazine/content/05_38/b3951049.htm.

⁴¹ E.g., Isfan Comments at 2; Udovic Comments at 4, 5.

campaign is the latest iteration of this theme.⁴² When the power goes out, copper loops are still “on.” The desire of consumers to retain the option of keeping their “always on” service in the face of increasing incumbent LEC copper retirements is surely worthy of Commission review.

C. The Petition Seeks to Put in Place a Process for Responsible and Reasoned Consideration of the Public Interest

No commenter challenges the three public policy goals – broadband deployment, wireline broadband competition, and public safety/homeland security – that Petitioners seek to advance through their proposed rule changes. Instead, the Bells allege that these policies are best served by the existing rules.⁴³ That is a hard story to sell, even with the Commission’s predictive but vague and, we respectfully submit, ultimately mistaken judgment that the modified network change rules would provide “adequate safeguards.”⁴⁴ As demonstrated in the Petition and in the comments,⁴⁵ the current rules have failed to provide “adequate safeguards.” The current rules provide competitors, consumers, and businesses with no meaningful opportunity to object to the retirements.⁴⁶ These rules even fail to provide the Commission with a regular opportunity to

⁴² See News Release, *Verizon Beams Quality Message to Customer Living Rooms: Network Dependability Influences Purchase Choice; New Ads Stress Confidence, Peace of Mind That Cable and VoIP Can't Provide* (Feb. 8, 2007) available at <http://newscenter.verizon.com/press-releases/verizon/2007/verizon-beams-quality-message.html>.

⁴³ AT&T Comments at 10; Verizon Comments at 9-13; USTA Comments at 10; Corning Comments at 3-5.

⁴⁴ See *id.* ¶ 281.

⁴⁵ See Comments of CBB Carrier Services, Inc., Expedient Carrier Services, LLC, Image Access, Inc. d/b/a NewPhone, Line Systems, Inc., LS Networks, RazorLine, LLC and SNiP LiNK LLC, RM-11358, at 3-10 (filed Mar. 1, 2007).

⁴⁶ Review of the notices provided by the incumbent LECs indicates that the Commission’s rules governing the content of network disclosure notices also should be modified to ensure that the potential impact of a proposed network change can be readily ascertained and to facilitate tracking of notices. To facilitate a process whereby interested parties may submit meaningful objections to copper retirements, the rules should be modified so that such notices must indicate whether proposed retirements will affect all customers served by a single incumbent LEC wire center, or alternatively, must provide information

consider the public interest impacts of copper loop retirements. Unfortunately, the current rules operate to ensure that the elimination of legacy copper loop plant – along with its broadband availability, broadband competition, and public safety/homeland security potential – is accomplished quickly (and at an incumbent LEC’s sole discretion), with just enough time for competitors and consumers to be pushed off the copper.

By contrast, the Petition merely seeks adoption of a process to ensure that the public interest is considered carefully when incumbent LECs seek to retire this valuable bottleneck loop plant. Contrary to the Bells’ assertions, the process proposed is not a uniform ban on copper loop retirement.⁴⁷ Instead, it is a process that recognizes that the public interest must be considered and does so by establishing a *rebuttable* presumption that copper loop retirement does not serve the public interest.⁴⁸ “Necessity” would in all likelihood rebut the presumption, but it must be the Commission as the expert agency that decides what qualifies as necessity. And not every retirement raises serious concerns. Where copper plant is beyond repair or set to be destroyed by road construction or building demolition the process proposed

sufficient to identify the individual end user locations that will be impacted by proposed retirements. Moreover, those rules should mandate that network disclosure notices issued by the incumbent LECs include a common identifier, linking incumbent LEC website postings to the corresponding Public Notice issued by the Commission. *See* Proposed Modifications to the FCC Rules, 47 C.F.R. § 51.327(a)(6) and (7), dated Apr. 2, 2007 (attached hereto as Exhibit A). The Bell Company network change notifications can be accessed at the following websites: (AT&T, former BellSouth territory) http://www.interconnection.bellsouth.com/alerts_and_notifications/network_disclosures/index.html; (AT&T, former SBC territory) <http://www.att.com/gen/public-affairs?pid=313>; (Qwest) <http://www.qwest.com/disclosures/>; (Verizon) http://www22.verizon.com/regulatory/reg_ntw_dscl.html.

⁴⁷ AT&T Comments at 13-14; Verizon Comments at 13; USTA Comments at 12-13.

⁴⁸ Petition at 2, 22-23; Exh. A § 51.337(c)(1).

allows for it.⁴⁹ However, where copper is in serviceable condition the proposed presumption is that it should stay in place barring the necessity of its retirement.

Notably, the avoidance of “too much competition” or “ruinous competition”, should not be considered a necessity.⁵⁰ Wireline and wireless competitors face intramodal competition in today’s bundled service broadband marketplace, and consumers have benefited from it. Incumbent LEC arguments that they should be relieved of intramodal competition so that they can better compete on an intermodal basis are nonsensical. The Bells’ suggestion that the retirement of copper is a condition precedent to their deployment of fiber presents the Commission with a false choice that it need not make. Support for this proposition actually is found in Verizon’s claims it has initiated no large scale retirement of copper in the wake of its FiOS deployment.⁵¹ AT&T makes similar claims.⁵² These claims make plain that the incumbent LECs most certainly will continue to respond to the market by deploying fiber where it makes sense for them to do so, regardless of whether they can eliminate intramodal competition through the use of copper loop retirement. Indeed, the most recent statistics released by the Commission demonstrate that the incumbent LECs continue to be the beneficiaries of their former monopolies

⁴⁹ For example, under Petitioners’ proposed rule section 51.337, an incumbent LEC planning to retire copper facilities is provided sufficient opportunity to demonstrate to the Commission that the proposed retirements are “force majeure.” In such situations, where no party files a Petition to Deny, the Commission may issue its order approving the proposed retirements as soon as thirty (30) days following the date of the Commission’s Public Notice.

⁵⁰ See, e.g., *Arizona v. Maricopa Cnty. Med. Soc.*, 457 U.S. 332, 345-46 (1982) (quoting *United States v. Socony Vacuum Oil Co.*, 310 U.S. 150, 218 (1940)) (“[Congress] has not permitted the age-old cry of ruinous competition and competitive evils to be a defense to price-fixing conspiracies.”).

⁵¹ Verizon Comments at 22.

⁵² AT&T Comments at 11-12.

with enormous market shares that endure and give them a tremendous ability to leverage investment over a broad customer base that no competitor can even approach.⁵³

It is not too late to save copper and to prevent continued wasting of this asset by the incumbent LECs. Although retirements of copper feeder and other copper loop plant have hastened in pace – especially since the Petitions were filed, a significant majority of homes and commercial buildings – 75% – are served by home-run copper loop plant.⁵⁴ This remaining copper loop plant almost certainly represents the most widely deployed and nearly ubiquitous broadband infrastructure in use today. The procedural rule modifications proposed, if adopted in a timely manner, will ensure the reasonable and rational preservation of this valuable loop plant so that the benefits it is capable of delivering remain available to the consumers and businesses who paid for the majority of this legacy plant in the pre-competition era.

The Bells' argument that Petitioners' proposal has been rejected previously by the Commission⁵⁵ is not accurate. The Commission has never before had an opportunity to consider this particular proposal. Though the Commission previously declined to require affirmative regulatory approval of copper loop retirements,⁵⁶ Petitioners have demonstrated here, nearly four years after that decision, that conditions have changed and that affirmative regulatory approval

⁵³ See Industry Analysis and Technology Division, Wireline Competition Bureau, *Local Telephone Competition: Status as of June 30, 2006*, 5-6 (Jan. 2007) available at http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-270133A1.pdf (stating that incumbent LECs still control more than 80% of End-User Switched Access Lines).

⁵⁴ Isfan Comments at 4, n.4.

⁵⁵ AT&T Comments at 13-14; Verizon Comments at 13; Qwest Comments at 5; USTA Comments at 12-13.

⁵⁶ Corning's current position in this proceeding is a surprising change, in light of its advocacy on copper facilities retirements in the *Triennial Review Order* proceeding. Indeed, in multiple *ex parte* submissions to the Commission, Corning supported a formal application process for copper facilities retirements. See, e.g., Ex Parte Letter from Jeffery S. Linder, Wiley Rein & Fielding, LLP, Counsel to Corning to Magalie Roman Salas, Secretary, Federal Communications Commission, Slide 7 (presentation re: Critical Impact of the UNE Decision on the Fiber Optics Industry) (Jan. 31, 2003).

prior to the retirement of copper loop facilities will better serve the Commission's broadband availability, broadband competition and public safety/homeland security policy goals. Indeed, by arguing that the process proposed will result in their not being able to retire copper, the Bells concede that, at least in most instances, such retirement is not necessary and will *not* serve the public interest.⁵⁷ The question begging consideration in this proceeding is not whether the proposed rule modifications serve the Bells' interests; it is whether the proposed rule modifications will allow the Commission to better achieve its public policy goals and, by so doing, improve in its performance as steward of the public interest in the communications sector of the national economy.

III. HARMS CAUSED BY THE CURRENT RULES ARE REAL: RETIREMENT OF COPPER LOOP PLANT HARMS COMPETITORS, BUSINESSES AND CONSUMERS AND UNDERMINES ATTAINMENT OF IMPORTANT POLICY GOALS

While claiming that copper loop retirement is an essential part of the Commission's broadband policy that is working well,⁵⁸ the Bells also claim that they are not retiring copper in any significant way.⁵⁹ If that is indeed the case, then it proves the point that copper loop retirement is not an essential element of the Commission's broadband policy. In fact, *preservation* of copper loop plant is one of the best means available to the Commission to achieve its goal of ubiquitous broadband deployment. No matter how prevalent, retirement of copper loop plant is likely in most instances to be an activity that actually *undermines* the Commission's broadband, competition and public safety policy priorities. Each piece of copper

⁵⁷ See Verizon Comments at 19-20.

⁵⁸ AT&T Comments at 10; Verizon Comments at 9-13; USTA at 9-10; Qwest Comments at 3.

⁵⁹ AT&T Comments at 11-12; Verizon Comments at 22-23.

loop plant that is needlessly retired represents a wasted broadband opportunity for competitors, businesses, and consumers.

This is true not only with respect to copper loops and subloop distribution plant, but also with respect to copper feeder plant. Indeed, a large number of the recent rash of retirement notices pertain to copper feeder plant. As explained below, once copper feeder plant is retired, it is essentially impossible for competitive LECs to provide new broadband services through the use of innovative new technologies such as Ethernet over copper and video over copper. Thus, it is critical for the Commission to include copper feeder retirements in a modified retirement procedure that subjects retirements to a public interest review standard. No party suggests that there is a valid reason for treating copper feeder different from other copper loop retirements.

Under the guise of the Commission's "broadband policy", the Bells also argue that Petitioners' proposal to ensure that the rate-payer financed legacy copper loop plant is available to the public and competitors would impose on them unreasonable additional costs associated with having to maintain "dual networks."⁶⁰ This argument is a red herring. As explained below, the network is integrated and will be for the foreseeable future. Moreover, the additional costs the Bells fear they will incur are recoverable from those who will continue to use the legacy network.

A. Copper Loop Retirement Is Antithetical to the Commission's Broadband Policy Goals

It is patently illogical to assert that copper loop retirement furthers the Commission's broadband policy goals. Indeed, the Bells' assertion that copper loop retirement

⁶⁰ AT&T Comments at 4; Qwest Comments at 5-6; Verizon Comments at 8; *see also* Corning Comments at 8.

is a key component of the Commission's broadband policy is belied by their claims that they are not retiring copper in the wake of their fiber deployments. Moreover, as explained below, the incumbent LECs will be using copper in their networks for decades to come. This demonstrates that such retirement is not an essential element of the Commission's broadband policy or a precondition to fiber deployment.

Rather than being an essential element of the Commission's broadband policy, current copper loop retirement rules actually undermine the Commission's goal of promoting ubiquitous broadband availability and competition. The Petition and comments confirm that copper loop retirement eliminates the ability of competitive LECs to provide broadband competition through the use of the most ubiquitous and cost effective broadband transmission medium available today: copper loops.⁶¹ Each and every time copper is retired it is no longer possible to provide advanced DSL, Ethernet over copper or video over copper.

As a result, copper loop retirements can strand investment in broadband equipment, stifle innovation, and cause the abandonment of additional broadband deployment plans. For example, based on noticed retirements in the Memphis, Tennessee market, XO will not plan to deploy Ethernet over copper equipment or offer its Ethernet products in that market. Similarly, copper loop facility retirements could easily result in a roll-back of other competitive LECs' ADSL2+ and video over copper service offerings. In short, diminishing the ubiquity of home-run copper loop plant will decrease the incentives for equipment manufacturers and competitive LECs to invest and develop new ways to get even more bandwidth from copper for new and innovative product offerings.

⁶¹ The incumbent LECs do not deny this but simply argue that it is irrelevant. *E.g.*, Verizon Comments at 14. As explained in Section IV below, this assertion of irrelevance is based on the false premise that the Commission permits the use of copper loop UNEs only for narrowband service.

Thus, the rule changes proposed in the Petition are needed to correct a significant impediment to achievement of the Commission's broadband policy goals. By subjecting copper loop retirements to a public interest review, the Commission can ensure that customers and carriers will not be needlessly forced off of copper broadband services and equipment without consideration of their substantive objections. Further, by doing so, the Commission will stimulate additional investment and innovation not only in broadband over copper, but also in fiber, because fiber also will be the beneficiary of more competition.

B. The Rule Modifications Proposed Must Extend to Retirements of Copper Feeder Plant

Assertions by AT&T and Verizon that retirements of copper facilities are not common practice do not appear to contemplate the retirement of copper feeder plant.⁶² Indeed, review of Verizon's network change postings reveals that all 102 copper facilities retirement notices posted year-to-date pertain to the copper feeder plant.⁶³ Current rules permit the retirement of copper feeder plant on "long term" notice without supervision by the

⁶² From **January 1, 2006 to the present**, Verizon posted on its website 103 copper feeder plant retirements (101 of 103 since January 1, 2007), each at separate remote terminal locations within Verizon's territory. *See Verizon's Network Disclosure Page, available at http://www22.verizon.com/regulatory/reg_ntw_dscl.html*. During the same time period, AT&T posted on its website 177 copper facilities retirements, each addressing multiple locations within the serving area of a single central office, within the legacy service territories of BellSouth and SBC. *See BellSouth's Network Disclosures, available at http://www.interconnection.bellsouth.com/alerts_and_notifications/network/network_disclosures/index.html; AT&T Network Disclosures, available at <http://www.att.com/gen/public-affairs?pid=3137>*. Since **January 18, 2007** (the date the Petition was filed), Verizon and AT&T, collectively, noticed 133 copper facilities retirements (102 by Verizon and 31 by AT&T). *Id.*

⁶³ *See Verizon's Network Disclosure Page, available at http://www22.verizon.com/regulatory/reg_ntw_dscl.html*.

Commission,⁶⁴ or alternatively, within a ten (10) day time frame, subject to the “short term” procedures established by the Commission for notice of general network changes.⁶⁵ Thus, the existing rules governing copper feeder plant retirements, in fact, allow the incumbent LECs to effectively eliminate the ability of competitors to provide broadband over copper with no Commission review whatsoever.

The unnecessary retirement of copper feeder plant is as harmful to competitors, consumers, and businesses as the retirement of any other copper loop plant. The ability of competitors to provide broadband over copper depends squarely on the preservation of access to “home-run” copper loops. Once copper feeder is retired, the entire loop facility is, for all practical purposes, rendered unavailable for broadband over copper technologies and services. This is because the retirement of copper feeder eliminates the contiguous copper connection from a competitive LEC’s central office collocation (where broadband equipment is deployed) to the customer premise. There is also no practical way to make use of the remaining copper subloop elements. Collocation at a remote terminal is generally impractical, if not impossible.⁶⁶ This is due to the fact that most remote terminals are designed with little extra space and often cannot accommodate a single rack of collocated equipment. In addition, remote terminals often employ a “shrink-wrap” design to ensure that extra space is limited. Even if there were space to collocate at a remote terminal, there are no practical alternatives for competitive LECs for transport back to a central office, since there no longer is a separate subloop unbundling

⁶⁴ See 47 C.F.R. § 51.331. For copper feeder retirements that the incumbent LECs intend to effect within a period greater than six months, the Commission need not issue any public notice of such retirements, or review objections to such retirements by interested parties.

⁶⁵ See 47 C.F.R. § 51.333.

⁶⁶ Petitioners are unaware of any competitive LEC that has successfully collocated at a remote terminal.

requirement for fiber feeder. Thus, copper feeder retirement creates an insurmountable barrier to robust wireline broadband competition and effectively strands remaining subloop UNEs.

Because unnecessary copper feeder retirements have the same effect on a competitor's ability to deploy and provide broadband – and result in the same public interest harms – as the unnecessary retirements of other copper loop facilities, the rule modifications proposed must extend to copper feeder retirements.⁶⁷ There is no basis for treating these retirements any differently. Indeed, the Commission did not articulate a reason for doing so in the *Triennial Review Order*.

C. The Incumbent LECs' "Dual Networks" Argument Is a Red Herring

The Bells argue that the Petition should be denied because applying a public interest standard to copper loop retirements would force them to maintain "dual networks." The reality is that, for the foreseeable future, they will do this anyway. And when the public interest compels the retention of copper loop plant that the Bells truly do not intend to use or maintain, existing Commission rules already adequately address the issue of costs. Under the existing rules, maintenance is not required until an unbundling request is received. Thus, there are no additional costs or savings lost. Moreover, the Commission's TELRIC rules provide for recovery of costs plus a reasonable profit.

⁶⁷ To avoid confusion that may result from the use of the term "subloop", modified proposed rule changes clarifying that the proposed rules apply to all copper loop facility retirements, including retirements of copper feeder, copper subloops and copper loops are attached hereto as Exhibit A.

1. The Proposed Rules Will Not Force the Incumbent LECs to Maintain Dual Networks

In their comments, the incumbent LECs claim that Petitioners' requested relief will force them to maintain dual networks.⁶⁸ Verizon, for instance, states that if the Petition is granted, incumbent LECs will "incur the cost and inefficiencies of maintaining dual networks **rather than moving over entirely to more efficient and robust fiber networks.**"⁶⁹ AT&T claims the proposals "would force incumbent LECs to maintain redundant copper loop facilities."⁷⁰ Corning supports this view alleging that "[o]perating two networks is more expensive than operating one of those networks and will affect return on investment."⁷¹

The Commission should not give credence to this hyperbole and the imprecise claims that the copper and fiber networks are somehow separate and distinct networks and that an immediate shift from the former to the latter is underway. The incumbent LECs have been operating one network with mixed copper and fiber architectures for well over a decade – and will continue to do so for decades to come.⁷² That this is the reality is confirmed by a statement made by **AT&T's President for Network Services** in the Midwest: **"Our managers and**

⁶⁸ AT&T Comments at 4; Verizon Comments at 8; Qwest Comments at 5-6; *see also* Corning Comments at 8.

⁶⁹ Verizon Comments at 8 (emphasis added).

⁷⁰ AT&T Comments at 4.

⁷¹ Corning Comments at 8.

⁷² *See* Ed Leon, *Awkward Growth Spurt, Do You Like Mixed Network Architectures?*, OSP MAGAZINE, December 2006, *available at* <http://www.ospmag.com/issues/article/?articleid=00000469> ("There are compelling arguments for retaining and maintaining the existing infrastructure. Chief among these are the billions of dollars already spent by incumbent service providers on the legacy infrastructure, and the billions more needed should these companies decide to overbuild.").

In the Commission's most recent edition of *Statistics of Communications Common Carriers (2004/2005 Edition)*, in the United States, it finds that there is over 6 million kilometers of copper cable and less than 1million kilometers of fiber cable (most of which is dark fiber). *Statistics of Communications Common Carriers, 2004/2005 Edition*, FEDERAL COMMUNICATIONS COMMISSION, 14 (2005).

technicians work in a world everyday that involves both copper and fiber technologies. The copper network still delivers quality service and, consequently, will be with us for a long time to come.”⁷³

Even a company like Verizon, which is accelerating deployment of its FiOS branded FTTH facilities, will be operating a network composed of both copper and fiber for the foreseeable future. First, FiOS is being built to counter the “triple-play” offerings of the cable operators and competitive LECs and thus is targeted at mass market customers – not enterprise customers. And, even for mass market customers, Verizon expects its FiOS infrastructure to pass approximately 50% of its households by 2010.⁷⁴ Of these households passed, Verizon expects to have at most a 35% penetration rate in the fifth year after deployment, and that the growth rate at that time already will have begun to level off.⁷⁵ That means that most mass markets customers in areas where FiOS is deployed will continue to be served by copper loops – and a substantial number of them over “home run” copper loops. This point was emphasized by **Verizon’s CFO** in speaking to financial analysts late last year: **“So if you have a central office and you have 50% penetration, the 50% that are not on FiOS stay on copper. We are not, at this point, suggesting that we’re going to be pulling copper out.”⁷⁶**

Petitioners are seeking to preserve access to copper loops and are asking the Commission to institute a process to ensure any retirements are determined to be in the public

⁷³ *OSP EXPO 2006 Keynote Preview, Meet Kirk Brannock, President – AT&T Network Services – Midwest*, OSP MAGAZINE, May 2006, available at <http://www.ospmag.com/issues/article/?articleid=00000414> (emphasis added).

⁷⁴ Presentation Slides, *Verizon Communications Inc. FiOS Briefing Session*, Sep. 27, 2006 at 10, available at <http://investor.verizon.com/news/20060927/20060927.pdf> (“*FiOS Briefing Slides*”).

⁷⁵ *FiOS Briefing Slides* at 47.

⁷⁶ Transcript of Conference Call, *Verizon Briefing Session*, Thomson StreetEvents, September 27, 2006, at 26, available at http://investor.verizon.com/news/20060927/20060927_transcript.pdf (emphasis added) (“*Verizon Briefing Transcript*”).

interest. As such, there may be instances where both copper and fiber loops are either used or kept available for use. This, however, should not be viewed as unusual or detrimental to the interests of the incumbent LECs. For instance, when a fiber drop is installed to the home, there is no reason that the existing copper drop could not be kept in place. But, in fact, the needless cutting of existing copper drops is typically what happens when FiOS is installed:

I have FiOS, and I still have my copper. How? When the installer came I asked him not to remove the copper. He said nobody ever asked that before. He asked me why, and I told him that I want to continue to have the option of purchasing a DSL circuit from a competitor should I not be happy with FiOS. He said that was a **good idea**, and left the four pairs I had to the pole.⁷⁷

There are also many instances where the incumbents run copper and fiber feeder cables in parallel depending on the circumstance.

The Commission should thus reject misleading statements from the incumbents about dual networks and focus instead on whether particular retirements are necessary. The incumbents have not successfully rebutted the Petitioners' evidence on the value of copper plant, and it is absolutely essential that the Commission act now to ensure that any retirement of such plant is consistent with the public interest.

⁷⁷ See Posting of John B. to <http://gigaom.com/2005/10/14/verizon-fios-insures-future-monopoly/> (Aug. 22, 2006) (emphasis added); *see also* Verizon Comments at n.70.

In the same blog, a Verizon technician posted an explanation for the company's position on removing copper loops: "Hi, I am a **Lead Verizon FiOS Tech in Pennsylvania**. I was reading all of the comments in the above "Posts" and just wanted to take a second to clarify some things. **We do indeed remove the copper when we install the new service to your home. The reason for this, the only reason, is so that Joe Blo can't go out and buy a "LOT" of phone numbers and supply a dial tone** (Over a network that Verizon paid to build.)" Posting of Fibertech to <http://gigaom.com/2005/10/14/verizon-fios-insures-future-monopoly/> (Nov. 4, 2005) (emphasis added).

2. Petitioner's Requested Relief Will Not Force the Incumbent LECs to Incur Increased Maintenance Costs

The incumbent LECs also oppose the Petition on grounds that the rule changes proposed would lead the incumbent LECs to incur additional maintenance costs. Qwest, for instance, alleges that “petitioners ignore the costs required to maintain unused plant in place in the absence of retail or wholesale customers.”⁷⁸ Such a statement misrepresents the position of the Petitioners. It is an indisputable fact that copper plant often requires little or no maintenance when not in use. And, even for plant that might require maintenance, Petitioners, consistent with current section 251 requirements, are not seeking to have the incumbent LECs maintain those facilities without recovering their costs. Most importantly, in light of the variability of plant, Petitioners want the Commission to establish a process so that facts can be reviewed to ensure that a valuable asset is not retired precipitously.

More specifically, the cost to maintain copper plant varies greatly based on a number of factors, *e.g.*, age of the plant, whether the cable is buried or aerial, and environmental conditions. These costs vary over time and with new technological developments, which can successfully minimize maintenance costs. For instance, Frontier Communications has successfully used a process of silicon injection to deal with water infiltration which can cause harm to copper cables.⁷⁹ The carrier has found that trouble calls on segments treated with silicon have been virtually eliminated, with an annual cost saving of \$2 million. This has enabled them to focus on other issues and to improve the quality and reliability of service offerings.⁸⁰ This

⁷⁸ Qwest Comments at 5.

⁷⁹ See Posting of Fibertech to <http://gigaom.com/2005/10/14/verizon-fios-insures-future-monopoly/> (Nov. 4, 2005) (“90% of all of our maintenance is water related.”).

⁸⁰ Randall Lis & Joseph Scarfe, *Water, Water Everywhere*, OSP MAGAZINE, September, 2006, available at

example is just one of many demonstrating the great variability in whether there is even a cost burden and how much it might be.

The Commission itself has recognized the variability of maintenance costs in adopting the “Copper Maintenance and Notification” condition in the SBC-Ameritech Order. This condition required SBC-Ameritech to “consider factors...before it will retire a mainframe terminated copper facility between the central office and the end user’s premises: (1) whether the cost to maintain the copper facility for an acceptable level of service is greater than the cost to replace it with fiber and associated electronics; (2) whether public requirements force facility relocation; (3) whether all ducts and manholes are blocked and more network capacity is required on a given route; (4) whether a copper feeder cable is underutilized and the cost to maintain the copper is greater than fiber and associated electronics replacement cost; or (5) Acts of God or catastrophic failure.”⁸¹

Thus, the Commission should reject the simplistic argument espoused by the incumbent LECs that they will become burdened by increased maintenance costs should the Petitioners’ proposal be adopted. Rather, the Commission, in reviewing the fact-specific circumstances of retirement requests, should build upon its precedent, which recognizes both the variability in and value of copper facilities.

<http://www.ospmag.com/issues/article/?articleid=00000444&PHPSESSID=2d19ebd26ef136b64f7b09ec05bf6310>.

⁸¹ *Ameritech Corp., Transferor, and SBC Communications, Inc., Transferee, For Consent to Transfer Control of Corporations Holding Commission Licenses and Lines Pursuant to Sections 214 and 310(d) of the Communications Act and Parts 5, 22, 24, 25, 63, 90, 95, and 101 of the Commission's Rules*, 15 FCC Rcd 17521, Appendix B at 41 (2000).

3. Petitioner's Requested Relief Will Not Force the Incumbent LECs to Forgo Savings in Maintenance Costs

In stark contrast to the statement of its own CFO quoted above, Verizon claims that “the petitioners’ proposal poses a substantial threat to investment” in FiOS because it will lose “cost savings from the operation” of its FiOS network if it must continue to operate copper facilities. It then points to its disclosures to the financial community about lower rates of “trouble tickets” and overall maintenance cost savings.⁸²

Once again, the Commission should reject such sweeping hyperbole and imprecise statements. Petitioners are not seeking to deprive Verizon of the cost savings it might attain by serving its own customers over FiOS or by building the theoretical all-fiber network that its CFO has made clear it has no current plans to deploy.⁸³ Instead, Petitioners simply seek to ensure that legacy copper loop plant is retired only in a manner that comports with important public policy objectives, including those that are advanced by preserving access to copper loop infrastructure. Again, the Act and the Commission’s pricing rules already assure Verizon recovery of the costs of unbundling these facilities.⁸⁴ Contrary to Verizon’s assertions,⁸⁵ TELRIC has been affirmed as being appropriately compensatory.⁸⁶

⁸² Verizon Comments at 15-16.

⁸³ As Verizon itself has noted, it will continue to operate copper loops in tandem with its FiOS network. It has further stated that the installation of FiOS will “actually free[] up all this copper for customers who are still sitting back on copper.” *Verizon Briefing Transcript* at 24. In effect, by leaving the copper in place, Verizon will lower its maintenance costs for the remaining copper customers.

⁸⁴ 47 U.S.C. § 252(d)(1); *see also* 47 C.F.R. §§ 51.503, 51.505. Commission rules also provide that an incumbent LEC need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving an unbundling request. 47 C.F.R. § 51.319(a)(3)(iii)(B).

⁸⁵ Verizon Comments at 17 (characterizing TELRIC rates as being “below cost” and asserting that “TELRIC never fully compensates an ILEC for the use of its facilities”).

⁸⁶ *Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers; Implementation of the Local Competition Provisions of the Telecommunications Act of 1996; Deployment of Wireline Services Offering Advanced*

Moreover, just because Verizon anticipates that its operational expenses will be lower because of its FiOS deployment does not necessarily equate to these savings being realized to the degree predicted. And it does not necessarily equate to cost savings being negated because Verizon would be prevented from retiring copper plant. Verification that any such savings are attributable to a particular retirement would require the Commission to examine the facts. Verizon, in effect, supports such an undertaking when it noted in its comments to financial analysts that the “trouble ticket” rate depends “on the age of the existing copper plant.”⁸⁷ Thus, if there is something to Verizon’s claim, Petitioners have proposed a process capable of addressing it. The “one size fits all approach” advocated by the incumbent LECs in this proceeding does not reflect the reality of how the local network is structured and operated, and it buttresses the need for an oversight process that focuses directly on facts surrounding a retirement of a copper loop facility.

IV. THE BELLS’ LEGAL ARGUMENTS AGAINST THE PETITION ARE WITHOUT MERIT: THE PROPOSED RULE CHANGES ARE CONSISTENT WITH THE COMMISSION’S IMPAIRMENT FINDINGS AND DELINEATION BETWEEN OLD AND NEW WIRES

The legal arguments lodged by the Bells in opposition to the Petition mischaracterize the Commission’s precedent. The rule changes sought in the Petition are irrelevant, according to the Bells, because competitive LECs’ impairment as to copper loops is

Telecommunications Capability, Report and Order and Order on Remand and Further Notice of Proposed Rulemaking, FCC 03-36, ¶ 102 (rel. Aug. 21, 2003) (a non-TELRIC pricing approach for UNEs “would...be contrary to the Act’s requirement that unbundled facilities -- facilities without which serving the market becomes uneconomic -- should be priced at cost-based rates and our determination that TELRIC is the appropriate methodology for determining those rates – an approach to rates that the Supreme Court has affirmed”) (citing *Verizon*, 535 U.S. 467, 497-528 (2002)). The Commission modified its TELRIC pricing rules in its *Triennial Review Remand Order*. See *Access to Network Elements; Review of the Section 251 Unbundling Obligations of Incumbent Local Exchange Carriers*, Order on Remand, FCC 04-290, ¶ 102 (rel. Feb. 4, 2005).

⁸⁷ *Verizon Briefing Transcript* at 21.

limited to narrowband services. However, Commission precedent says no such thing and indeed makes perfectly clear that competitive LECs may use copper loop UNEs for either narrowband or broadband services – or both.

A. The Proposed Rule Changes Are Consistent with the Commission's Impairment Determination

In their initial comments, the incumbent LECs assert that the ability of competitive LECs to provide broadband over copper loops is irrelevant because the Commission has found that competitive LECs are impaired without access to copper loops for narrowband service only.⁸⁸ But the Commission has never made such a finding. Indeed, the Commission has expressly found to the contrary. In the *Triennial Review Order*, the Commission determined that:

requesting carriers are generally impaired on a national basis without unbundled access to the incumbent LECs' local loops, whether they seek to provide narrowband or broadband services, or both.⁸⁹

Further, the Commission also declared that:

the practical effect of this unbundling requirement is to ensure that requesting carriers have access to the copper transmission facilities they need in order to provide narrowband or broadband services (or both) to customers served by copper local loops.⁹⁰

Consistent with the Commission's determinations, and directly contrary to the claims of the Bells, the existing rules applicable to unbundling of copper loops, and copper subloops,

⁸⁸ See AT&T Comments at 16-17; Qwest Comments at 5; USTA Comments at 11-13; Verizon Comments at 13-14, 25-26.

⁸⁹ *TRO* ¶ 248 (emphasis added).

⁹⁰ *Id.* ¶ 250.

respectively, do not limit a competitive LEC's use of such facilities to narrowband services or applications.

B. The Proposed Rule Changes Are Consistent with the Commission's Delineation Between Old and New Wires

The proposed rule modifications are also consistent with the Commission's delineation between old and new wires serving mass market customers. Contrary to the Bells' claims regarding the Commission's broadband policy, the Commission plainly pronounced, as part of that policy, that it:

seek[s] to promote the deployment of equipment that can unleash the full potential of the embedded copper loop plant so that consumers can experience enhanced broadband capabilities....⁹¹

Far from limiting its broadband policy to the promotion of investment through the adoption of new rules for new wires for mass market broadband, the Commission embraced an **"obligation to encourage infrastructure investment tied to legacy loops"** and declared that its policy in this regard is **"driven by facilitating competition and promoting innovation."**⁹² The Commission further explained that, "through our unbundling rules, to encourage both intramodal and intermodal carriers (in addition to incumbent LECs) to enter the broadband mass market and make infrastructure investments in equipment."⁹³

The Commission's broadband policy is not and never has been old wires for narrowband and new wires for broadband. Nor should it be. The Commission's broadband policy expressly embraces broadband over old wires and that is, in large part, what this proceeding is about. More precisely, it is about preventing the wasting of this valuable legacy

⁹¹ *Id.* ¶ 244 (emphasis added).

⁹² *Id.* (emphasis added).

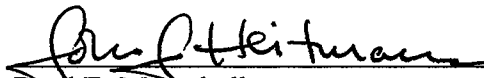
⁹³ *Id.* (emphasis added).

copper loop plant. As demonstrated in the Petition, comments and these reply comments, “old wire” legacy copper loops are the most ubiquitous broadband transmission infrastructure in place today. These facilities can and should continue to be used to spur investment in broadband equipment and competitive entry into the next generation of ultra-high speed broadband and video over copper. To ensure that this happens, Petitioners request that the Commission establish a process in which public interest concerns must be thoughtfully considered before copper loop plant is retired. Such a process would enhance the Commission’s ability to achieve the important policy goals it has identified with respect to broadband availability, broadband competition and public safety. It would also allow the market to decide among competing technologies, services, speeds, media and carriers.

V. CONCLUSION

For the reasons set forth herein, Petitioners respectfully request that the Commission expeditiously grant the relief sought in the Petition, and as further clarified herein, applicable to retirement of copper loops, copper feeder and copper subloops by the incumbent LECs.

Respectfully submitted,



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EXHIBIT A

Proposed Modifications to FCC Rules

§51.319 Specific unbundling requirements.

(a) Local loops. An incumbent LEC shall provide a requesting telecommunications carrier with nondiscriminatory access to the local loop on an unbundled basis, in accordance with Section 251(c)(3) of the Act and this part and as set forth in paragraphs (a)(1) through (a)(9) of this section. The local loop network element is defined as a transmission facility between a distribution frame (or its equivalent) in an incumbent LEC central office and the loop demarcation point at an end-user customer premises. This element includes all features, functions, and capabilities of such transmission facility, including the network interface device. It also includes all electronics, optronics, and intermediate devices (including repeaters and load coils) used to establish the transmission path to the end-user customer premises as well as any inside wire owned or controlled by the incumbent LEC that is part of that transmission path. For purposes of this section 51.319(a) and subsections, the feeder plant is defined as the portion of the local loop, whether copper or fiber, between a distribution frame (or its equivalent) in an incumbent LEC central office and any point of technically feasible access in an incumbent LEC's outside plant, including but not limited to a pole or pedestal, the serving area interface, the network interface device, the minimum point of entry, any remote terminal and the feeder-distribution interface).

(3) Fiber loops.

(i) Definitions.

(A) Fiber-to-the-home loops. A fiber-to-the-home loop is a local loop consisting entirely of fiber optic cable, whether dark or lit, serving an end user's customer premises or, in the case of predominantly residential multiple dwelling units (MDUs), a fiber optic cable, whether dark or lit, that extends to the multiunit premises' minimum point of entry (MPOE).

(B) Fiber-to-the-curb loops. A fiber-to-the-curb loop is a local loop consisting of fiber optic cable connecting to a copper distribution plant that is not more than 500 feet from the customer's premises or, in the case of predominantly residential MDUs, not more than 500 feet from the MDU's MPOE. The fiber optic cable in a fiber-to-the-curb loop must connect to a copper distribution plant at a serving area interface from which every other copper distribution subloop also is not more than 500 feet from the respective customer's premises.

(ii) New builds. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC deploys such a loop to an end user's customer premises that previously has not been served by any loop facility.

(iii) Overbuilds. An incumbent LEC is not required to provide nondiscriminatory access to a fiber-to-the-home loop or a fiber-to-the-curb loop on an unbundled basis when the incumbent LEC has deployed such a loop parallel to, or in replacement of, an existing copper loop facility, except that:

(A) The incumbent LEC must maintain the existing copper loop connected to the particular customer premises after deploying the fiber-to-the-home loop or the fiber-to-the-curb loop and provide nondiscriminatory access to that copper loop on an unbundled basis unless the incumbent LEC retires the copper loops pursuant to paragraph (a)(3)(iv) of this section.

(B) An incumbent LEC that maintains the existing copper loops pursuant to paragraph (a)(3)(iii)(A) of this section need not incur any expenses to ensure that the existing copper loop remains capable of transmitting signals prior to receiving a request for access pursuant to that paragraph, in which case the incumbent LEC shall restore the copper loop to serviceable condition upon request.

(C) An incumbent LEC that retires the copper loop pursuant to paragraph (a)(3)(iv) of this section shall provide nondiscriminatory access to a 64 kilobits per second transmission path capable of voice grade service over the fiber-to-the-home loop or fiber-to-the-curb loop on an unbundled basis.

(iv) Retirement of copper loops, ~~or~~ copper subloops or copper feeder plant. The term "retire" (or "retirement") shall mean the act of removing copper loops, copper subloops or copper feeder plant from service, and shall include, at minimum (a) physically disconnecting, disabling, or rendering any portion of a copper loop, copper subloop or copper feeder plant technically incapable of providing service, or (b) permanently removing the copper loop, copper subloop or copper feeder plant from the conduit, pole attachment or controlled environment in or on which the copper facility was housed. Prior to retiring any copper loop, ~~or~~ copper subloop or copper feeder plant that has been replaced with a fiber-to-the-home loop or a fiber-to-the-curb loop, or fiber feeder plant, an incumbent LEC must comply with:

(A) The network disclosure requirements set forth in Section 251(c)(5) of the Act and in §51.325 through §51.335; ~~and~~

(B) Any applicable state requirements; and

(C) The application procedures for retirement of copper loops, copper subloops and copper feeder plant set forth in § 51.337.

§51.325 Notice of network changes: Public notice requirement.

(a) An incumbent local exchange carrier ("LEC") must provide public notice regarding any network change that:

(1) Will affect a competing service provider's performance or ability to provide service;

(2) Will affect the incumbent LEC's interoperability with other service providers; or

(3) Will affect the manner in which customer premises equipment is attached to the interstate network.

(4) Will result in the retirement of copper loops, ~~or copper subloops or copper feeder plant~~, and the replacement of such loops with fiber-to-the-home loops, ~~or fiber-to-the-curb loops or fiber feeder plant~~, as those terms are defined in §51.319(a)(3).

(b) For purposes of this section, interoperability means the ability of two or more facilities, or networks, to be connected, to exchange information, and to use the information that has been exchanged.

(c) Until public notice has been given in accordance with §51.325 through §51.335, an incumbent LEC may not disclose to separate affiliates, separated affiliates, or unaffiliated entities (including actual or potential competing service providers or competitors), information about planned network changes that are subject to this section.

(d) For the purposes of §51.325 through §51.335, the term services means telecommunications services or information services.

§ 51.327 Notice of network changes: content of notice.

(a) Public notice of planned network changes must, at a minimum, include:

- (1) The carrier's name and address;
- (2) The name and telephone number of a contact person who can supply additional information regarding the planned changes;
- (3) The implementation date of the planned changes;
- (4) The location(s) at which the changes will occur;
- (5) A description of the type of changes planned (information provided to satisfy this requirement must include, as applicable, but is not limited to, references to technical specifications, protocols, and standards regarding transmission, signaling, routing, and facility assignment as well as references to technical standards that would be applicable to any new technologies or equipment, or that may otherwise affect interconnection); and
- (6) A description of the reasonably foreseeable impact of the planned changes, which shall include, at a minimum, sufficient information (i) to identify the individual end user customer premises that will be impacted by the planned changes, or (ii) whether the planned changes will impact all end user customers served by a single incumbent LEC central office; and-
- (7) A common identifier.

(b) The incumbent LEC also shall follow, as necessary, procedures relating to confidential or proprietary information contained in §51.335.

§51.329 Notice of network changes: methods for providing notice.

(a) In providing the required notice to the public of network changes, an incumbent LEC may use one of the following methods; provided, however, that for an incumbent LEC's proposed retirement of copper loops, copper subloops or copper feeder plant pursuant to § 51.319(a)(3)(iv), the incumbent LEC also shall provide notice in writing to each information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network, unless the Commission authorizes in advance, for good cause shown, another form of notice to such parties:

(1) Filing a public notice with the Commission; or

(2) Providing public notice through industry fora, industry publications, or the carrier's publicly accessible Internet site. If an incumbent LEC uses any of the methods specified in paragraph (a)(2) of this section, it also must file a certification with the Commission that includes:

(i) A statement that identifies the proposed changes;

(ii) A statement that public notice has been given in compliance with §51.325 through §51.335; and

(iii) A statement identifying the location of the change information and describing how this information can be obtained.

(iv) Where notice in writing of an incumbent LEC's proposed retirement of copper loops, copper subloops or copper feeder plant is required under paragraph (a) of this section, a copy of the written notification submitted by the incumbent LEC to each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC's network, and a Certificate of Service, which shall include:

(A) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each information service provider and telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(B) The name and address of each such information service provider and telephone exchange service provider upon which the notice was served.

(b) Until the planned change is implemented, an incumbent LEC must keep the notice available for public inspection, and amend the notice to keep the information complete, accurate and up-to-date.

(c) Specific filing requirements. Commission filings under this section must be made as follows:

(1) The public notice or certification must be labeled with one of the following titles, as appropriate: "Public Notice of Network Change Under Rule §51.329(a)," "Certification of Public Notice of Network Change Under Rule §51.329(a)," "Short Term Public Notice Under Rule §51.333(a)," or "Certification of Short Term Public Notice Under Rule §51.333(a)."
"Public Notice of Retirement of Copper Loops(s), Copper Subloop(s) and/or Copper Feeder Plant Under Rule § 51.329(a)," or "Certification of Public Notice of Retirement of Copper Loop(s), Copper Subloop(s) and/or Copper Feeder Plant Under Rule § 51.329(a)."

(2) Two paper copies of the incumbent LEC's public notice or certification, required under paragraph (a) of this section, must be sent to "Secretary, Federal Communications Commission, Washington, DC 20554." The date on which this filing is received by the Secretary is considered the official filing date.

(3) In addition, one paper copy and one diskette copy must be sent to the "Chief, Wireline Competition Bureau, Federal Communications Commission, Washington, DC 20554." The diskette copy must be on a standard 3-1/2 inch diskette, formatted in IBM-compatible format to be readable by high-density floppy drives operating under MS DOS 5.X or later compatible versions, and shall be in a word-processing format designated, from time-to-time, in public notices released by the Bureau. The diskette must be submitted in "read only" mode, and must be clearly labeled with the carrier's name, the filing date, and an identification of the diskette's contents.

§51.331 Notice of network changes: timing of notice.

(a) An incumbent LEC shall give public notice of planned changes, other than its proposed retirement of copper loops, copper subloops or copper feeder plant pursuant to § 51.319(a)(3)(iv), at the make/buy point, as defined in paragraph (b) of this section, but at least 12 months before implementation, except as provided below:

(1) If the changes can be implemented within twelve months of the make/buy point, public notice must be given at the make/buy point, but at least six months before implementation.

(2) If the changes can be implemented within six months of the make/buy point, public notice may be given pursuant to the short term notice procedures provided in §51.333.

(b) For purposes of this section, the make/buy point is the time at which an incumbent LEC decides to make for itself, or to procure from another entity, any product the design of which affects or relies on a new or changed network interface. If an incumbent LEC's planned changes do not require it to make or to procure a product, then the make/buy point is the point at which the incumbent LEC makes a definite decision to implement a network change.

(1) For purposes of this section, a product is any hardware or software for use in an incumbent LEC's network or in conjunction with its facilities that, when installed, could affect the compatibility of an interconnected service provider's network, facilities or services with an incumbent LEC's existing telephone network, facilities or services, or with any of an incumbent carrier's services or capabilities.

(2) For purposes of this section a definite decision is reached when an incumbent LEC determines that the change is warranted, establishes a timetable for anticipated implementation, and takes any action toward implementation of the change within its network.

(c) An incumbent LEC shall give public notice of its proposed retirement of copper loops, copper subloops or copper feeder plant pursuant to § 51.319(a)(3)(iv) at least twelve (12) months before the date on which the incumbent LEC intends to implement such retirement, which date shall be specifically stated in the public notice. An incumbent LEC shall not retire copper loops, copper subloops or copper feeder plant except to the extent permitted by order of the Commission, subject to application procedures set forth in § 51.337.

~~(c) Competing service providers may object to incumbent LEC notice of retirement of copper loops or copper subloops and replacement with fiber to the home loops or fiber to the curb loops in the manner set forth in §51.333(c).~~

§51.333 Notice of Network Changes: Short term notice, objections thereto and objections to retirement of copper loops, ~~or copper subloops or copper feeder plant.~~

(a) Certificate of service. If an incumbent LEC wishes to provide less than six months notice of planned network changes, the public notice or certification that it files with the Commission must include a certificate of service in addition to the information required by §51.327(a) or §51.329(a)(2), as applicable. The certificate of service shall include:

(1) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each telephone exchange service provider that directly interconnects with the incumbent LEC's network; and

(2) The name and address of each such telephone exchange service provider upon which the notice was served.

(b) Implementation date. The Commission will release a public notice of filings of such short term notices ~~or notices of replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops.~~ The effective date of the network changes referenced in those filings shall be subject to the following requirements:

(1) Short term notice. Short term notices shall be deemed final on the tenth business day after the release of the Commission's public notice, unless an objection is filed pursuant to paragraph (c) of this section.

~~(2) Replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops. Notices of replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops shall be deemed approved on the 90th day after the release of the Commission's public notice of the filing, unless an objection is filed pursuant to paragraph (c) of this section. Incumbent LEC notice of intent to retire any copper loops or copper subloops and replace such loops or subloops with fiber to the home loops or fiber to the curb loops shall be subject to the short term notice provisions of this section, but under no circumstances may an incumbent LEC provide less than 90 days notice of such a change.~~

(c) Objection procedures for short term notice ~~and notices of replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops.~~ An objection to an incumbent LEC's short term notice ~~or to its notice that it intends to retire copper loops or copper subloops and replace such loops or subloops with fiber to the home loops or fiber to the curb loops~~ may be filed by an information service provider or telecommunications service provider that directly interconnects with the incumbent LEC's network. Such objections must be filed with the Commission, and served on the incumbent LEC, no later than the ninth business day following the release of the Commission's public notice. All objections filed under this section must:

(1) State specific reasons why the objector cannot accommodate the incumbent LEC's changes by the date stated in the incumbent LEC's public notice and must indicate any specific technical information or other assistance required that would enable the objector to accommodate those changes;

(2) List steps the objector is taking to accommodate the incumbent LEC's changes on an expedited basis;

(3) State the earliest possible date (not to exceed six months from the date the incumbent LEC gave its original public notice under this section) by which the objector anticipates that it can accommodate the incumbent LEC's changes, assuming it receives the technical information or other assistance requested under paragraph (c)(1) of this section;

(4) Provide any other information relevant to the objection; and

(5) Provide the following affidavit, executed by the objector's president, chief executive officer, or other corporate officer or official, who has appropriate authority to bind the corporation, and knowledge of the details of the objector's inability to adjust its network on a timely basis:

"I, (name and title), under oath and subject to penalty for perjury, certify that I have read this objection, that the statements contained in it are true, that there is good ground to support the objection, and that it is not interposed for purposes of delay. I have appropriate authority to make this certification on behalf of (objector) and I agree to provide any information the Commission may request to allow the Commission to evaluate the truthfulness and validity of the statements contained in this objection."

(d) Response to objections. If an objection is filed, an incumbent LEC shall have until no later than the fourteenth business day following the release of the Commission's public notice to file with the Commission a response to the objection and to serve the response on all parties that filed objections. An incumbent LEC's response must:

(1) Provide information responsive to the allegations and concerns identified by the objectors;

(2) State whether the implementation date(s) proposed by the objector(s) are acceptable;

(3) Indicate any specific technical assistance that the incumbent LEC is willing to give to the objectors; and

(4) Provide any other relevant information.

(e) Resolution. If an objection is filed pursuant to paragraph (c) of this section, then the Chief, Wireline Competition Bureau, will issue an order determining a reasonable public

notice period, provided however, that if an incumbent LEC does not file a response within the time period allotted, or if the incumbent LEC's response accepts the latest implementation date stated by an objector, then the incumbent LEC's public notice shall be deemed amended to specify the implementation date requested by the objector, without further Commission action. An incumbent LEC must amend its public notice to reflect any change in the applicable implementation date pursuant to §51.329(b).

~~(f) Resolution of objections to replacement of copper loops or copper subloops with fiber to the home loops or fiber to the curb loops. An objection to a notice that an incumbent LEC intends to retire any copper loops or copper subloops and replace such loops or subloops with fiber to the home loops or fiber to the curb loops shall be deemed denied 90 days after the date on which the Commission releases public notice of the incumbent LEC filing, unless the Commission rules otherwise within that time. Until the Commission has either ruled on an objection or the 90-day period for the Commission's consideration has expired, an incumbent LEC may not retire those copper loops or copper subloops at issue for replacement with fiber to the home loops or fiber to the curb loops.~~

§51.335 Notice of network changes: confidential or proprietary information.

(a) If an incumbent LEC claims that information otherwise required to be disclosed is confidential or proprietary, the incumbent LEC's public notice must include, in addition to the information identified in §51.327(a), a statement that the incumbent LEC will make further information available to those signing a nondisclosure agreement.

(b) Tolling the public notice period. Upon receipt by an incumbent LEC of a competing service provider's request for disclosure of confidential or proprietary information, the applicable public notice period will be tolled until the parties agree on the terms of a nondisclosure agreement. An incumbent LEC receiving such a request must amend its public notice as follows:

(1) On the date it receives a request from a competing service provider for disclosure of confidential or proprietary information, to state that the notice period is tolled; and

(2) On the date the nondisclosure agreement is finalized, to specify a new implementation date.

§ 51.337 Procedures for Retirement of Copper Loops, Copper Subloops or Copper Feeder Plant.

(a) Prior to retiring any copper loop or copper subloop, or copper feeder plant that has been replaced with a fiber-to-the-home loop or a fiber-to-the-curb loop, or fiber feeder plant, an incumbent LEC shall provide public notice of such retirement in accordance with the requirements set forth in §51.325 through §51.335, and shall notify and submit a copy of its application to the public utility commission and the governor of the State in which the retirement is proposed.

(b) The incumbent LEC shall file with the Commission, on or after the date on which the public notice has been provided in accordance with the requirements set forth in § 51.325 through § 51.335 an application which shall contain the following:

(1) Caption “§ 51.337 Application for Retirement of Copper Loops, Copper Subloops or Copper Feeder Plant;”

(2) Information listed in § 51.327(a)(1) through (6);

(3) A statement that public notice has been provided in accordance with the requirements set forth in § 51.325 through § 51.331, including a brief description of the dates and methods of such public notice. Where notice in writing of an incumbent LEC’s proposed retirement of copper loops, copper subloops or copper feeder plant is required under paragraph (a) of the section, a copy of the written notification submitted by the incumbent LEC to each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC’s network, and a Certificate of Service, which shall include:

(A) A statement that, at least five business days in advance of its filing with the Commission, the incumbent LEC served a copy of its public notice upon each information service provider and telecommunications service provider that directly interconnects with the incumbent LEC’s network; and

(B) The name and address of each such information service provider and telecommunications service provider upon which the notice was served.

(4) A description of the service area, including geographic area, population and general character (i.e., whether a business or residential community) currently served by the copper loops, copper subloops or copper feeder plant that the incumbent LEC intends to retire;

(5) The name of any other carrier or carriers providing telephone service to the community;

(6) A description of any previous retirement of copper loops, copper subloops or copper feeder plant serving the community affected by the application, which the

applicant has requested during the 12 months preceding the date of filing the application, and whether such application was approved by the Commission;

(7) A statement of any present plans for future retirement of copper loops, copper subloops or copper feeder plant to the community affected by the application; and

(8) Any other information that the Commission may require.

(c) Each application for retirement of copper loops, copper subloops or copper feeder plant shall be accompanied by a statement showing how the grant of the application will serve the public interest, convenience and necessity, and will not adversely affect other service providers or consumers.

(1) For purposes of this section, the Commission shall presume that retirement of copper loops, copper subloops and copper feeder plant does not serve the public interest, convenience and necessity. The applicant may rebut such presumption by a showing that retirement of the subject copper loops, copper subloops or copper feeder plant:

(a) Serves the public interest, convenience and necessity; and

(b) Is necessary to deploy fiber-to-the-home or fiber-to-the-curb loops or fiber feeder plant to the end user's customer premises that currently is served by the existing copper facilities; such that deployment of fiber-to-home and fiber-to-the-curb loops, or fiber feeder plant to such customer premises would not be possible if the subject copper loops, copper subloops or copper feeder plant were maintained.

(d) Petition to deny application for retirement of copper loops, copper subloops or copper feeder plant. Any interested party may file a petition to deny an incumbent LEC's application for retirement of copper loops, copper subloops or copper feeder plant, in accordance with § 1.939, within 30 days following the release of the Commission's public notice of such application. Such petition to deny shall contain specific allegations to show that a grant of the application would be inconsistent with the public interest, convenience and necessary, or is not necessary to permit deployment of the fiber facilities described in the application. Such allegations of fact shall, except for those of which official notice may be taken, be supported by an affidavit of a person or persons with personal knowledge thereof. The applicant may file an opposition to any petition to deny, and the petitioner may file a reply to such opposition, in accordance with § 1.45, and allegations of fact or denials thereof shall similarly be supported by an affidavit.

(e) Until the Commission has ruled on the application for retirement of copper loops, copper subloops or copper feeder plant, and any petition to deny such application, the incumbent LEC may not retire the subject copper loops, copper subloops or copper feeder plant for replacement with fiber-to-the-home or fiber-to-the-curb loops, or fiber feeder plant.